

SUPREME COURT OF NORTH DAKOTA

Saefke v. Stenehjem

673 N.W.2d 41 (N.D. 2003) · No. No. 20030202 · Decided December 29, 2003

SUMMARY

The Supreme Court of North Dakota affirmed dismissal of Frederick Saefke's claims challenging the Attorney General's opinions concerning Burleigh County donations to the Bismarck-Mandan Symphony Orchestra. The court held that Saefke's claims against the Attorney General did not present a justiciable controversy and that the state's attorney acted within his prosecutorial discretion. The court dismissed the appeal regarding appointment of a private attorney under N.D.C.C. § 11-16-06 and declined to issue a supervisory writ.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; William A. Neumann, Justice; John C. McClintock, Jr., District Judge; Everett Nels Olson, Surrogate Judge; Dale V. Sandstrom, Acting Chief Justice
JURISDICTION	North Dakota
DECIDED	December 29, 2003
DOCKET	No. 20030202
DISPOSITION	affirmed
PROCEDURAL POSTURE	Saefke appealed from a district court judgment dismissing his claims against the attorney general and county state's attorney. He alternatively sought a supervisory writ directing the district court to appoint an attorney to prosecute civil and criminal claims against county commissioners.
STANDARD OF REVIEW	A dismissal under N.D.R.Civ.P. 12(b) is reviewed by testing the legal sufficiency of the complaint; the complaint is construed in the light most favorable to the plaintiff and well-pleaded allegations are accepted as true. A mandamus determination is reviewed for whether the writ should not issue as a matter of law or whether the district court abused its discretion. Supervisory-writ jurisdiction is discretionary and exercised rarely and cautiously.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Frederick E. Saefke, Jr. v. Wayne Stenehjem, Attorney General, State of North Dakota, Richard J. Riha, State's Attorney of Burleigh County, North Dakota

TOPICS

civil procedure appellate procedure standard of review ripeness remedies

PRACTICE AREAS

civil procedure appellate procedure constitutional law municipal law remedies

QUESTIONS PRESENTED

1. Whether Saefke's challenge to the attorney general's formal opinion presented a justiciable controversy supporting declaratory relief.
2. Whether the state's attorney had a mandatory duty to initiate civil or criminal proceedings against the county commissioners and whether mandamus or appointment of a private attorney was warranted.
3. Whether the district court's refusal to appoint a private attorney under N.D.C.C. § 11-16-06 was appealable.
4. Whether the Supreme Court should exercise supervisory jurisdiction and issue a supervisory writ.

HOLDINGS

1. A challenge to the correctness of the attorney general's opinion did not present a justiciable controversy because there was no present actual case or controversy concerning the county commission's authority to make the donations; deciding the issue would produce an advisory opinion.
2. The state's attorney's decisions not to pursue additional civil recovery and to refer potential criminal prosecution to the attorney general were discretionary decisions, and the district court did not err in refusing to issue a writ of mandamus.
3. An order refusing to appoint a private attorney under N.D.C.C. § 11-16-06 was not appealable under N.D.C.C. § 28-27-02; the attempted appeal was therefore considered together with the alternative petition for a supervisory writ.
4. The Supreme Court declined to issue a supervisory writ because the record did not establish a need to correct an error or prevent an injustice, and Riha's discretionary decisions were supported by a rational process.

KEY QUOTATIONS

"In the absence of a present actual case or controversy challenging the commission's authority to make donations to the Symphony, any resolution of Saefke's claims against Stenehjem about the correctness of Stenehjem's opinion would result in an advisory opinion. Courts do not render advisory opinions." (45-46)

"Our power to issue supervisory writs is discretionary and cannot be invoked as a matter of right." (47)

“Riha's reasons for not pursuing a civil action are the product of a rational mental process leading to a reasoned determination and support his discretionary decision not to initiate a civil proceeding against the county commissioners.” (48)

FACTUAL BACKGROUND

Burleigh County commissioners authorized a \$5,000 contribution to the Bismarck-Mandan Symphony Orchestra for a July 4 celebration at the state capitol grounds, after the county state's attorney had expressed the view that county donations to private groups generally violated N.D. Const. art. X, § 18. The attorney general later issued a formal opinion concluding that the donations were prohibited and that the state's attorney had discretionary authority to pursue recovery from the commissioners. The state's attorney obtained repayment of the 2002 contribution, declined to pursue earlier contributions after evaluating the costs and likelihood of recovery, and referred potential criminal prosecution to the attorney general, who declined to prosecute.

PROCEDURAL HISTORY

Saefke sued challenging the attorney general's opinion that the state's attorney had discretion whether to pursue civil recovery and the attorney general's decision not to prosecute the commissioners criminally. He also alleged the state's attorney had failed to perform statutory duties and sought appointment of a private attorney under N.D.C.C. § 11-16-06. The district court dismissed the claims against Stenehjem, found that Riha had not failed to perform his duties, denied appointment of an attorney, and denied mandamus relief. The Supreme Court affirmed the dismissal of the claims against Stenehjem, dismissed the appeal concerning appointment of an attorney, and denied a supervisory writ.

DISPOSITION

affirmed

CASES CITED

- Ziegelmann v. DaimlerChrysler Corp., 2002 ND 134, ¶ 5, 649 N.W.2d 556
- In Interest of McMullen, 470 N.W.2d 196, 198-99 (N.D. 1991)
- Iverson v. Tweeden, 78 N.D. 132, 138-40, 48 N.W.2d 367, 370-71 (1951)
- State v. Baker, 74 N.D. 244, 259, 21 N.W.2d 355, 364 (1945)
- Werlinger v. Champion Healthcare Corp., 1999 ND 173, ¶ 47, 598 N.W.2d 820
- Askew v. City of Ocala, 348 So. 2d 308, 310 (Fla. 1977)
- Kelley v. Board of Registration in Optometry, 351 Mass. 187, 218 N.E.2d 130, 133 (1966)
- Gershman Inv. Corp. v. Danforth, 517 S.W.2d 33, 35-36 (Mo. 1974)
- City of Jackson v. Heritage Savings & Loan Assoc., 639 S.W.2d 142, 145-46 (Mo. Ct. App. 1982)
- State ex rel. Sanstead v. Freed, 251 N.W.2d 898, 902-03 (N.D. 1977)
- Danzl v. City of Bismarck, 451 N.W.2d 127, 128-29 (N.D. 1990)
- Nord v. Herrman, 1998 ND 91, ¶ 12, 577 N.W.2d 782
- Wilson v. Koppy, 2002 ND 179, ¶¶ 1, 12-14, 653 N.W.2d 68

- Frank v. Traynor, 1999 ND 183, ¶ 9, 600 N.W.2d 516
- Olsen v. Koppy, 1999 ND 87, 593 N.W.2d 762
- Mitchell v. Sanborn, 536 N.W.2d 678, 682-83 (N.D. 1995)
- B.H. v. K.D., 506 N.W.2d 368, 372-73 (N.D. 1993)
- City of Fargo v. Dawson, 466 N.W.2d 584, 585 (N.D. 1991)
- Odden v. O'Keefe, 450 N.W.2d 707, 708 (N.D. 1990)
- Keidel v. Mehrer, 464 N.W.2d 815, 816 (N.D. 1991)
- Hennebry v. Hoy, 343 N.W.2d 87, 90-91 (N.D. 1983)
- State ex rel. Ilvedson v. District Court, 70 N.D. 17, 25, 291 N.W. 620, 624 (1940)
- Bell v. State, 1998 ND 35, ¶ 19, 575 N.W.2d 211
- Mehrer v. Mehrer, 464 N.W.2d 815, 816-17 (N.D. 1991)
- Hoy, 343 N.W.2d 87, 90-91 (N.D. 1983)